

ENFORCEMENT DECREE OF THE UTILITY MODEL ACT

Wholly Amended by Presidential Decree No. 19696, Sep. 28, 2006
Amended by Presidential Decree No. 20128, Jun. 28, 2007
Presidential Decree No. 20137, Jun. 29, 2007
Presidential Decree No. 20729, Feb. 29, 2008
Presidential Decree No. 21054, Sep. 30, 2008

Article 1 (Purpose)

The purpose of this Decree is to provide for matters delegated by the Utility Model Act and those necessary for its enforcement.

Article 2 (Scope of Electric Communications Circuits)

The term “electric communication circuits specified in Presidential Decree” in Article 4 (1) 2 of the Utility Model Act (hereinafter referred to as the “Act”) means the electric communication circuits operated by a person falling under any of the following subparagraphs:

1. The Government or a local government, a foreign central or local government, or an international organization;
2. A national or public school under Article 3 of the Higher Education Act or a foreign national or public college or university;
3. A national or public research institute in Korea or a foreign country;
and
4. A corporation established for purposes of engaging in the business related to the patent information, and designated and publicly notified by the Commissioner of the Korean Intellectual Property Office as the one for such purposes.

Article 3 (Method to Describe Claims for Utility Model Registration)

(1) In describing the claims for utility model registration (hereinafter referred to as “claims”) as provided for in Article 8 (8) of the Act, there shall be the description of an independent claim concerning the article (hereinafter referred to as “independent claim”), and dependent claims (hereinafter referred to as “dependent claims”) may be added to make the independent claim more specific with restrictive or additional description to the independent claim. In such cases, another dependent claim may be added to make such dependent claim more specific with restrictive or

additional description, if necessary. <Amended by Presidential Decree No. 20128, Jun. 28, 2007>

(2) The claims shall be divided into the appropriate number of claims according to the nature of devices.

(3) A dependent claim shall cite one or more independent or another dependent claims, and shall indicate the number of the cited claim.

(4) A claim citing two or more claims shall show the number of cited claims alternatively.

(5) The claim cited in a claim as one of two or more claims may not cite again two or more other claims. The same shall apply to cases where a claim cited in a claim as one of two or more claims cites another claim to cite two or more claims again consequently.

(6) A cited claim shall be mentioned ahead of another claim citing the claim.

(7) Each claim shall be described in a new line, and a serial number in an Arabic numeral shall be assigned to each claim in the describing order.

Article 4 (Requirements for Each Utility Model Registration Application for Each Group of Devices)

Each group of devices under the proviso to Article 9 (1) of the Act shall meet the following requirements for application for a single utility model:

1. There shall be technical correlation between the devices claimed; and
2. Each device claimed shall have an identical or corresponding technical feature. In such cases, the technical feature of the devices as a whole shall be the improved one better than that of prior technology.

Article 5 (Applications Eligible for Preferential Examination)

The term "patent applications specified by Presidential Decree" in subparagraph 2 of Article 61 of the Patent Act as applied *mutatis mutandis* pursuant to Article 15 of the Act means the applications for utility model falling under any of the following subparagraphs and prescribed by the Commissioner of the Korean Intellectual Property Office: <Amended by Presidential Decree No. 20128, Jun. 28, 2007; Presidential Decree No. 20137, Jun. 29, 2007; Presidential Decree No. 21054, Sep. 30, 2008>

1. Utility model application for defense industry;
2. Utility model application useful for the prevention of pollution;
3. Utility model application directly related to the promotion of export;
4. Utility model application related to the functions of the State or local governments (including the utility model application filed by an organization established within a national or public school and exclusively dedicated to the technology transfer and the promotion of commercialization thereof under Article 11 (1) of the Act on the Tech-

- nology Transfer and the Promotion of Commercialization Thereof among the utility model applications related to the functions of national and public schools as defined in the Higher Education Act):
5. Utility model application filed by an enterprise recognized as a venture business under Article 25 of the Act on Special Measures for the Promotion of Venture Businesses;
 6. Utility model application filed by an enterprise selected as one of technology-innovative small and medium enterprises under Article 15 of the Technical Renovation of Small and Medium Enterprises Act;
 7. Utility model application related to a product from the State's project for the development of new technology or quality certification;
 8. Utility model application that serves as a ground for the priority right under a treaty (limited to the process for a patent application or utility model application filed and pending with a foreign patent office based on the claim of priority right);
 9. Utility model application under which the applicant of the utility model application is currently working, or is at the stage of preparation for working, the device for which the application for utility model was filed;
 10. Utility model application directly related to electronic transactions;
 11. Utility model application filed simultaneously with a request for examination and for which a request for preferential examination is filed within two months thereafter; and
 12. Utility model application for which a person who intends to file an application for preferential examination retained a specialized institution under Article 58 (1) of the Patent Act, which shall apply *mutatis mutandis* pursuant to Article 15 of the Act, to conduct a survey on prior arts with respect to the utility model for which the utility model application is pending, and requested the specialized institution to notify the results of the survey to the Commissioner of the Korean Intellectual Property Office.

Article 6 (Decision on Preferential Examination)

- (1) A person who requests the preferential examination under Article 61 of the Patent Act as applied *mutatis mutandis* pursuant to Article 15 of the Act shall submit a written application for preferential examination prescribed by Ordinance of the Ministry of Knowledge Economy to the Commissioner of the Korean Intellectual Property Office. *<Amended by Presidential Decree No. 20729, Feb. 29, 2008>*
- (2) Upon receiving the application for preferential examination under paragraph (1), the Commissioner of the Korean Intellectual Property Office

shall decide whether to allow the preferential examination.

(3) Necessary matters concerning the decision on the preferential examination under paragraph (2) shall be provided by the Commissioner of the Korean Intellectual Property Office.

Article 7 (Utility Model Gazettes)

(1) The Utility Model Gazettes under Article 42 of the Act shall be divided into the Utility Model Gazette for publication of registration and the Utility Model Gazette for disclosure.

(2) The Utility Model Gazette for publication of registration shall contain the following matters:

1. The name and address of the owner of the utility model right (in case of a legal person, its title and location of business place);
2. The application number, classification code and date of application;
3. The name and address of the deviser;
4. The registration number and establishment date of utility model;
5. The publication date of registration;
6. Matters concerning the claim for priority right;
7. Matters concerning amended or divisional application;
8. Specification, drawings, and abstract attached to the application for utility model registration;
9. The serial number and date of disclosure of application;
10. Contents corrected under Article 133-2, 136, or 137 of the Patent Act as applied *mutatis mutandis* pursuant to Article 33 of the Act; and
11. Other matters considered necessary by the Commissioner of the Korean Intellectual Property Office.

(3) The Utility Model Gazette for disclosure shall contain the following matters: *Provided*, That the matters considered likely to cause disturbance to the public order or morals or a harm to public health shall not be contained:

1. The name and address of the applicant (in case of a legal person, its title and location of business place);
2. The application number, classification code and date of application;
3. The name and address of the deviser;
4. Matters concerning the claim for priority right;
5. Matters concerning amended or divisional application;
6. Specification, drawings, and abstract attached to the application for utility model registration;
7. The serial number and date of disclosure of application;
8. The fact that a request for examination of application has been filed in accordance with Article 60 (2) of the Patent Act as applied *mu-*

tatis mutandis pursuant to Article 15 of the Act: *Provided*, That the disclosure number, classification code, and application number of the application shall be published in the Utility Model Gazette for disclosure which will be issued later along with the fact that the request for examination of application has been filed, if the fact that the request for examination of application had been filed was not published at the time of the publication of application:

9. The notice that anyone may furnish the Commissioner of the Korean Intellectual Property Office with the information that the relevant device is not eligible for utility model registration along with supporting evidences in accordance with Article 63-2 of the Patent Act as applied *mutatis mutandis* pursuant to Article 15 of the Act; and
10. Other matters related to the disclosure of application for utility model registration.

Article 8 (Imposition and Collection of Fine for Negligence)

The guidelines for the imposition of a fine for negligence under Article 52 (1) of the Act are as provided for in Table annexed hereto: *Provided*, That the Commissioner of the Korean Intellectual Property Office may abate or aggravate a fine for negligence within the extent of one half of the amount specified therein, taking into consideration the degree, frequency, motive, and consequences of the relevant offense, and other relevant facts, but the amount of a fine for negligence after aggravated may not exceed the maximum limit of the amount under Article 52 (1) of the Act.

[This Article Wholly Amended by Presidential Decree No. 21054, Sep. 30, 2008]

Article 9 (Mutatis Mutandis Application of Enforcement Decree of Patent Act)

(1) The provisions of Articles 2 through 4, 8-2, 8-3, 11 through 16, and 18 of the Enforcement Decree of the Patent Act shall apply *mutatis mutandis* to the applications, requests, and other procedures for utility model registration. *<Amended by Presidential Decree No. 20128, Jun. 28, 2007>*

(2) The provisions of Article 8 of the Enforcement Decree of the Patent Act shall apply *mutatis mutandis* to the qualifications for an examiner, trial examiner, chief trial examiner and the Director of the Intellectual Property Tribunal with respect to the examination and trial on an application for utility model registration.

ADDENDA

- (1) (Enforcement Date) This Decree shall enter into force on October 1,

2006: *Provided*, That the amended provisions of Article 8 (2) and (3) 2 of the Enforcement Decree of the Patent Act as applied *mutatis mutandis* pursuant to Article 9 (2) shall enter into force on July 1, 2007.

(2) (Applicable Cases concerning Objects of Preferential Examination) The amended provisions of Article 5 shall apply to the application for preferential examination submitted on or after the date when this Decree is enforced.

(3) (Transitional Measures following Issuance of Utility Model Gazette) The Utility Model Gazette for application for utility model registration filed under the previous provisions at the time when the amended provisions of Article 7 enter into force shall be issued in accordance with the previous provisions.

(4) (Transitional Measures concerning Qualifications of Trial Examiners, etc.) The persons qualified as a trial examiner or chief trial examiner under the previous provisions at the time when the amended provisions of Article 8 (2) and (3) of the Enforcement Decree of the Patent Act as applied *mutatis mutandis* in Article 9 (2) enter into force shall be deemed to be qualified as the trial examiner or chief trial examiner under this Decree.

ADDENDUM *⟨Presidential Decree No. 20128, Jun. 28, 2007⟩*

This Decree shall enter into force on July 1, 2007.

ADDENDA *⟨Presidential Decree No. 20137, Jun. 29, 2007⟩*

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 through 5 Omitted.

ADDENDA *⟨Presidential Decree No. 20729, Feb. 29, 2008⟩*

Article 1 (Enforcement Date)

This Decree shall enter into force on the date of its promulgation.

Articles 2 and 3 Omitted.

ADDENDA *⟨Presidential Decree No. 21054, Sep. 30, 2008⟩*

Article 1 (Enforcement Date)

This Decree shall enter into force on October 1, 2008.

Article 2 (Applicability to Cases Eligible for Preferential Examination)

The amended provisions of Article 5 shall apply to the applications for preferential examination filed on or after the date this Decree enters into force.